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Federal immigration enforcement is mandatory, memo says

A recently released memo says that the Secure Communities program will become mandatory by 2013; states and some counties had been told they could opt out.



Homeland Security Secretary Janet Napolitano at a December speech to the Council on Foreign Relations in Washington. (Mark Wilson / Getty Images)

By Paloma Esquivel, Los Angeles Times

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Two years after the Secure Communities immigration enforcement program was implemented, federal officials determined that choices available to local law enforcement agencies that wished to decline or limit their participation would be "streamlined" or "eliminated," making the information-sharing program mandatory, according to a memo recently made public.

Launched in 2008, Secure Communities was promoted to local and state leaders as a way to focus immigration enforcement efforts on "serious convicted criminals." But the program, which involves the [FBI](#) sharing fingerprints collected from county jails with [U.S. Immigration and Customs Enforcement](#), has come under fire because a large percentage of immigrants caught up in the system were never convicted of a crime or were low-level offenders.

Federal officials initially said there were ways for state and local officials to drop out of the program. This assertion was repeated by Homeland Security Secretary [Janet Napolitano](#) and Assistant Atty.

Gen. Ronald Welch.

Three states sought to opt out of or suspend participation in Secure Communities, and last August the [Department of Homeland Security](#) told governors that the fingerprint-sharing program did not need their approval to operate and that it was voiding agreements signed to authorize their states' participation.

The action was denounced by some political leaders, immigration advocacy groups and other opponents of the program. Several state officials complained that they were misled or lied to.

In a 9-page memo dated Oct. 2, 2010, and released recently, a legal advisor for U.S. Immigration and Customs Enforcement said at that time that "choices available to law enforcement agencies who have thus far decided to decline or limit their participation in current information-sharing processes will be streamlined and aspects eliminated. In that way, the process, in essence, becomes 'mandatory' in 2013."

A U.S. Immigration and Customs Enforcement spokeswoman said the memo was not inconsistent with prior policy.

"ICE did not change its position on the mandatory nature of Secure Communities," spokeswoman Virginia Kice said in an e-mail. "As the legal memo explains, once a state or local government voluntarily submits fingerprint information to federal law enforcement officials, it cannot dictate how this information is shared to protect public safety."

Whether state and local jurisdictions can be compelled to participate in the federal fingerprint-sharing program has been a key question as states including New York, Illinois, Massachusetts and some counties have sought to opt out or suspend participation only to be told they cannot.

Federal officials fought to block release of the memo, which they initially argued was privileged, but were ordered to do so by a judge overseeing a Freedom of Information Act lawsuit filed by the Center for Constitutional Rights, the National Day Laborer Organizing Network and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law.

Documents previously released as a result of the suit showed immigration officials struggling over a period of several months with whether the program was voluntary and changing their messaging to the public after some localities tried to opt out.

U.S. District Judge Shira A. Scheindlin, who is overseeing the suit, has said that there is ample evidence to show that immigration and Homeland Security officials went "out of their way to mislead the public about Secure Communities."

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